IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 26000 of 2007(T)

PETITIONER:

INDIAN MEDICAL ASSOCIATION, KOLLAM
WEST BRANCH, KOLLAM DISTRICT.
REPRESENTED BY ITS SECRETARY, DR.M.ROY,
S/O.MANUEL ANJALOSE, AGED 34 YEARS, RESIDING AT
COMPANY KADAYIL, SAKTHIKULANGARA, KOLLAM-691 581.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
KOLLAM WEST, KOLLAM DISTRICT.

3. DR.V.SASHIDHARAN PILLAI, SHABARI,
KANGATHU JN. KOLLAM WEST VILLAGE,
KOLLAM DISTRICT.

R1 & 2 BY GOVT. PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 26000 of 2007 T

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Dated this the 20th day of September, 2007

JUDGMENT

The short grievance of the petitioner is that Crime No. 65 of 2005, in which the Indian Medical Association, the petitioner, is the defacto complainant, has not been properly investigated by the police. A refer report has been filed by the police after completing the investigation. The petitioner was kept in the dark about such refer report. No notice was issued to the petitioner either by the police or by the learned Magistrate before considering the refer report. The petitioner has substantial grievances to raise against the refer report. He has been denied that opportunity to raise his objections and persuade the learned Magistrate not to accept the refer report.

2. Report of the learned Magistrate was called for. The learned Magistrate reports in the report dt. 11.9.2007 that the petitioner was not served and no notice of the refer report was given either by the police or by the court.

3. I agree with the learned counsel for the petitioner that there is gross violation of the dictum in **Bhagavant Singh** v. **Commissioner of Police** (1985 (2) SC 537).

4. In these circumstances the acceptance of the refer report by the learned Magistrate is hereby set aside. The learned Chief Judicial Magistrate is directed to consider the refer report afresh after giving the petitioner an opportunity to raise all his objections against the refer report. The petitioner shall appear before the learned Chief Judicial Magistrate on 22.10.2007. Within 10 days from this date, the Investigating Officer shall serve notice of the refer report on the petitioner.

5. This Writ Petition is in these circumstances allowed to the above extent.

6. Hand over copy to the learned Prosecutor.

(R. BASANT)
Judge

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